

September 30, 1992

CD-92-16 (LDV, LDT)

Dear Manufacturer:

SUBJECT: Cold Temperature CO Phase-in for Small Volume Aggregated Firms

This letter is in response to recent questions concerning the aggregation of manufacturers' sales volumes for purposes of the phase-in of the Cold Temperature CO standards. The Agency believes that it is important to maintain consistency between the small volume and Cold Temperature CO regulations in the treatment of the term "manufacturer." Therefore, the Agency has determined that where ten percent or more of any small volume manufacturer is owned by a large volume manufacturer, the two companies may aggregate sales for purposes of determining compliance with the Cold Temperature CO phase-in. Independent small volume manufacturers--those with less than ten percent ownership by any other party--are exempt from the Cold Temperature CO requirements until the final year of the phase-in.

This is consistent with small volume regulations promulgated in 1990 (55 FR 7178) as well as the requirements presented in a Manufacturer guidance letter of January 13, 1992 concerning Tier 1 Phase-in for small-volume aggregated firms. As stated in the preamble to the Cold Temperature final rule, the Agency believes that small volume manufacturers with ten percent or greater ownership by another party have effectively established "a financial business link wherein each party could benefit from the other." However, EPA realizes that such companies, while deriving financial benefits that justify their treatment as large volume companies for certification procedures, may effectively have the same problems with a limited product line as a totally independent small volume manufacturer would have in meeting Cold Temperature CO phase-in requirements. Since the sales of such manufacturers are aggregated with those of the parent company for determination of large volume status, it is consistent to also treat them as part of the parent company's sales for Cold Temperature CO phase-in purposes.

In addition, as stated in the preamble to the Cold CO final rule (57 FR 31893), the Agency has the authority to grant exemptions from the phase-in requirements under de minimus situations. For

this reason, the Agency chose to exempt independent small volume manufacturers from the phase-in until its final year and incorporated this provision into the Cold Temperature CO regulations. Small volume manufacturers with ten percent or greater ownership by another party may face the same burdens meeting the Cold Temperature CO requirements as true small volume companies, but without the allowance for exemption. To alleviate the burden for these companies without altering the intent of the Cold CO regulation or the statute, EPA will allow their sales to be counted under the parent company for purposes of the phase-in.

In general, the Agency will assume that the entity applying for the certificate plans to comply with the phase-in independently, and enforcement actions may be brought against the certificate holder if such requirements are not met. However, where ten percent or more of a small volume manufacturer is owned by a large volume manufacturer, these companies may agree to aggregate their sales for purposes of the phase-in and make this agreement evident to the EPA through written statements from both parties. The Agency will then assume that the sales of the two companies are to, in aggregate, meet the phase-in requirements, and may bring enforcement actions against the parent company if such requirements are not met. Specifically, EPA would aggregate the sales of the large and small volume manufacturers for purpose of the Cold CO Phase-in if letters from both companies were included in the small volume manufacturers application for certification. The letter must state the small manufacturers agreement to be included with the large volume (or owning) manufacturer phase-in as well as the large volume manufacturers acceptance of the responsibility for inclusion of these sales in its totals.

Should you have additional comments or questions regarding these procedures, please contact your certification representative.

Sincerely,

Robert E. Maxwell, Director
Certification Division